

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/05/2001

CLERK OF THE COURT
FORM L513

HONORABLE MICHAEL D. JONES

T. Pavia
Deputy

LC 2001-000308

FILED: SEP 19 2001

STATE OF ARIZONA

BRIAN G DIPIETRO

v.

DAVID LEE TOMASELLO

DAVID LEE TOMASELLO
4211 S 331ST AVE
TONOPAH AZ 85354-0000

BUCKEYE CITY COURT
FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC

APPEAL RULING / REMAND

BUCKEYE CITY COURT

Cit. No. 17815

Charge: A: EXHIBITION OF SPEED;
 B: FAIL TO SHOW LICENSE OR ID;
 C: LICENSE PLATE TO BE DISPLAYED AND ATTACHED;
 D: NO CURRENT REG;
 E: FAIL TO CARRY VEHICLE REGISTRATION CARD

DOB: 07-03-59

DOC: 02-13-01

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This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

Appellant was charged with five criminal and civil traffic violations which allegedly occurred on February 13, 2001 within the municipality of Buckeye, Arizona: Exhibition of Speed, in violation of A.R.S. 28-708(A), a criminal traffic violation; Failure to Show License or Identification, in violation of A.R.S. 28-1595(B), a criminal traffic violation; License Plate to Be Displayed and Attached, in violation of A.R.S. 28-2354, a civil traffic violation; No Current Registration, in violation of A.R.S. 28-2153(A), a civil traffic violation; and Failure to Carry Vehicle Registration Card, in violation of A.R.S. 28-2158(C), a civil traffic violation. These matters proceeded to trial and Appellant was found responsible on all matters. Appellant was fined \$400.00 for Exhibition of Speed, \$180.00 for Failure to Show License or Identification, \$65.00 for Failure to Display License Plate, \$90.00 for No Current Registration, and \$90.00 for Failure to Carry a Vehicle Registration Card. Appellant filed a timely notice of appeal in this case.

Appellant first challenges the Buckeye Court's jurisdiction over him claiming a "reservation of rights" pursuant to the Uniform Commercial Code. Appellant's jurisdictional arguments are nonsense. The Buckeye Municipal Court has jurisdiction over Appellant and civil or criminal traffic violations committed by Appellant within the city boundaries pursuant to A.R.S. Section 28-1552.

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The next issue raised by the Appellant concerns the sufficiency of the evidence to warrant the conviction on the Exhibiting of Speed charge. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.² If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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establishes a fact in issue, then such evidence must be considered as substantial.⁷

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgments of responsibility and guilt and the sentences and sanctions imposed.

IT IS FURTHER ORDERED remanding this matter back to the Buckeye Municipal Court for further proceedings.

⁷ Id. At 553, 633 P.2d at 362.
Docket Code 513